

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review –)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with)	
Administration of Telecommunications)	
Relay Service, North American Numbering)	
Plan, Local Number Portability, and)	
Universal Service Support Mechanisms)	
)	
Telecommunications Services for)	CC Docket No. 90-571
Individuals with Hearing and Speech)	
Disabilities, and the Americans with)	
Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost Recovery)	
Contribution Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170

AT&T PETITION FOR WAIVER

Pursuant to Section 1.3 of the Commission’s Rules,¹ AT&T Corp. (“AT&T”) requests that the Commission grant it a waiver from those provisions of the Commission’s Universal Service Fund (“USF”) rules that require adjustments to its first quarter 2003 revenue projections

¹ 47 C.F.R. § 1.3.

to be submitted not later than March 20, 2003, so as to eliminate the effect of first quarter 2003 projections errors in the annual true-up process.² Based on this waiver, AT&T would submit a revision to line 120 of the February 1, 2003 Form 499-Q that substitutes its *actual* interstate and international end user telecommunications revenues for the first quarter 2003. The annual USF true-up rules require the Universal Service Administrative Company (“USAC”) to net out AT&T’s *projected* first quarter 2003 revenues from its calendar year 2003 actual revenues to determine its ultimate liability for USF payments for the second through fourth quarters of 2003. Instead, pursuant to this waiver, USAC should be permitted more appropriately to subtract AT&T’s *actual* 2003 first quarter revenues from its actual revenues for calendar year 2003 revenues.³ Absent a waiver, AT&T will be forced to pay more than its fair share based on its *actual* 2003 second through fourth quarter revenues because of a forecasting error for the first quarter 2003. This error had no impact whatsoever on setting of the first quarter USF 2003 contribution factor, nor on AT&T’s USF contributions for that period, which were based on historical revenues through that quarter. A waiver is necessary to ameliorate the unanticipated effect of the rule which would unfairly penalize carriers such as AT&T that realized greater revenues in the first quarter 2003 than they had projected.

ARGUMENT

Section 1.3 provides that the Commission may waive its rules “if good cause therefor is shown.”⁴ Generally, a waiver is appropriate if “special circumstances warrant deviation from the

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-239, ¶¶ 20, 36, rel. December 13, 2003.

³ On April 1, 2004, AT&T will submit to USAC (through standard reporting channels) its annual 2003 actual revenue data on FCC Form 499-A.

⁴ 47 C.F.R. § 1.3.

general rule and such deviation will serve the public interest.”⁵ Because of the important “safety valve” function that waivers perform, it is well established that the Commission must give requests for waivers a “hard look.”⁶ As explained below, a waiver is necessary here to avoid the unintended effect of the rule.

In December 2002, the Commission adopted interim measures to ensure the near term sustainability of the USF. Among other revisions, the Commission decided to base carriers’ USF contributions on projected, collected end-user interstate revenues, instead of the then-existing mechanism that was based on historical, gross-billed revenues.⁷ This change improved competitive neutrality among contributing carriers by eliminating the systemic bias against carriers with declining interstate and international revenues that was inherent in the historical revenue-based scheme. The new projected revenue-based USF mechanism took effect on April 1, 2003. *See* 47 C.F.R. §§ 54.706 & 54.709, as amended. To implement this mechanism, in order to provide USAC with a full year of projected revenues with which to conduct the annual true-up for 2003 revenues, the Commission required contributors to report projected collected revenues for the first quarter of 2003 on the February 1, 2003 Form 499-Q.⁸

“USAC [then] uses annual revenue data provided by contributors in the FCC Form 499-A to perform a true-up to quarterly revenue data submitted by contributors in FCC Form 499-Qs

⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁶ *WAIT Radio*, 418 F.2d at 1157.

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-239, rel. December 13, 2003.

⁸ *Id.* ¶ 37.

for the prior calendar year. As necessary, USAC refunds or collects from contributors any over-payments or under-payments.”⁹

In its *Order on Reconsideration*, the Commission recognized that a true-up of projections for calendar year 2003 was inappropriate as the first quarter projections were *not* used in setting the contribution factor for that quarter.¹⁰ The Commission expressly held that

“[b]ecause the purpose of the annual true-up is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms based on quarterly revenue data ...USAC should only apply the true-up to revenue periods for which universal service contributions actually were assessed. If USAC applied the true-up to revenues for which universal service contributions were not assessed, certain providers’ contribution obligation could potentially be increased or decreased.”¹¹

By way of illustration, according to the Commission, “[f]or example, if a contributor reported correct amounts for periods subject to contribution obligations, but an incorrect amount for a period not subject to contribution obligations, it would be subject to a true-up based purely on the amount overreported or underreported for the period not originally subject to contribution obligations.”¹² As the Commission recognized, this result would be unfair and should *not* occur.

The Commission held, in particular, that “[t]he true-up for calendar year 2003 revenues will apply to revenues projected for the second through fourth quarters of 2003. The true-up for calendar year 2003 revenues will *not* apply to revenues projected for the first quarter of 2003.”¹³

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, Order and Second Order on Reconsideration, FCC 03-58, ¶ 14, rel. March 14, 2003 (“Reconsideration Order”).

¹⁰ *Id.* ¶ 13.

¹¹ *Id.* ¶ 15.

¹² *Id.* n.27.

¹³ *Id.* ¶ 17 (emphasis added).

Nonetheless, the FCC stated that

*“USAC will subtract revenues projected for the first quarter of 2003 from annual revenues reported on the FCC Form 499-A to arrive at an estimate of a contributor’s actual revenues for the second through fourth quarters of 2003. USAC will then compare this amount to the sum of revenues projected for the second through fourth quarters of 2003 to determine whether a refund or collection is appropriate.”*¹⁴

The effect of this rule is to penalize carriers such as AT&T that had underprojected first quarter 2003 revenues. This under projection had no impact whatsoever on actual USF payments because the first quarter 2003 payments were predicated on a carrier’s historical revenues based on a 6-month lag. However, the effect of netting out an understated first quarter 2003 projection amount is to artificially and erroneously inflate AT&T’s USF contributions by approximately \$11 million (collected interstate and international revenues) for the second through fourth quarters 2003.¹⁵ This is because the Commission’s procedure set forth in the March 14, 2003 *Reconsideration Order* fails to true up a carrier’s 2003 revenues to *actual* collected amounts. Instead by netting out the *projected* amount for the first quarter, the true-up payments for the second through fourth quarters are increased by the amount of the underforecasting error in the first quarter. Thus, the stated procedure does not true up to actuals (which is the purpose of a true-up) but it simply nets out the first quarter projections against the actuals for calendar year 2003 to arrive at an estimate of the carrier’s revenues for the second through fourth quarters of 2003.

¹⁴ *Id.* (emphasis added).

¹⁵ If the true-up were performed *only* for the second through fourth quarters 2003 when the contribution factors were based on projected data, then AT&T’s true-up obligation would be \$9 million. Absent the waiver, AT&T will have to true-up \$20 million or \$11 million more than what is appropriately ascribed to the second through fourth quarters. AT&T *never* collected this \$11 million, as the contribution factor for the first quarter 2003 was not based on projected revenues.

A waiver in these circumstances is appropriate to avoid the harsh impact of the rule,¹⁶ and grant of the waiver would *not* undermine the purpose of the Commission's rules. In effect, by replacing the line 120 projected collected revenues in AT&T's February 1, 2003 Form 499Q with actual revenues, USAC will be able to true-up AT&T's second through fourth quarter projections free of any first quarter errors, as was intended by the Commission's *Reconsideration Order*.

Accordingly, AT&T requests that the Commission grant it the limited waiver discussed herein and allow USAC to net out AT&T's *actual* first quarter 2003 revenues from its calendar year 2003 revenues to determine its actual revenues for the second through fourth quarters 2003.

Respectfully submitted,

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January 27, 2004

¹⁶ See *Ex Parte* Letter from Amy L. Alvarez, AT&T to Marlene H. Dortch, FCC, CC Docket Nos. 96-45 *et al.*, December 16, 2003.